

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DEJWANN SIMMS,

Plaintiff,

v.

EDWARDS,

Defendant.

Case No. 1:22-cv-00028-JLT-BAM (PC)

**ORDER GRANTING DEFENDANT'S  
MOTION TO CHANGE TIME TO FILE  
REPLY TO PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S FAILURE TO EXHAUST  
MOTION FOR SUMMARY JUDGMENT**

(ECF No. 35)

**Reply Deadline: January 19, 2023**

Plaintiff Dejjwann Simms ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Edwards for deliberate indifference to medical needs and for failure to protect, in violation of the Eighth Amendment, related to the events surrounding Plaintiff's transport back to North Kern State Prison on October 16, 2020.

On October 31, 2022, Defendant filed a motion for summary judgment on the ground that Plaintiff failed to exhaust available administrative remedies before filing suit. (ECF No. 31.) Following an extension of time, Plaintiff filed his opposition on December 19, 2022. (ECF No. 34.) Defendant's reply is therefore due on or before January 3, 2023.

Currently before the Court is Defendant's motion for a sixteen-day extension of time to file a reply, filed December 22, 2022. (ECF No. 35.) Although Plaintiff has not had an

1 opportunity to respond to Defendant's request, the Court finds a response unnecessary. Local  
2 Rule 230(1).

3 Counsel for Defendant states that he will be on leave from work from December 23, 2022  
4 through January 2, 2023. (ECF No. 35-1.) After receiving Plaintiff's opposition on December  
5 19, 2022 through the Court's Electronic Case Filing system, counsel has been occupied by the  
6 press of case work in other matters. On counsel's anticipated return to the office on January 3,  
7 2023, counsel will be occupied with drafting a merits-based summary judgment motion in another  
8 matter, due January 12, 2023. The requested extension of time will afford counsel one week to  
9 draft a reply to Plaintiff's opposition. Counsel has reviewed Plaintiff's opposition and reasonably  
10 anticipates that one week is sufficient to conduct necessary research, draft a reply, and  
11 accommodate compulsory supervisor review prior to filing. Defendant therefore requests that the  
12 current reply deadline be extended through January 19, 2023. (*Id.*)

13 Having considered the request, the Court finds it appropriate to modify the briefing  
14 schedule in this matter. Fed. R. Civ. P. 6(b). The Court further finds that Plaintiff will not be  
15 prejudiced by the brief extension requested here.

16 Accordingly, Defendant's request for a sixteen-day extension of time, (ECF No. 35), is  
17 HEREBY GRANTED. Defendant's reply to Plaintiff's opposition to the motion for summary  
18 judgment is due on or before **January 19, 2023**.

19  
20 IT IS SO ORDERED.

21 Dated: **December 23, 2022**

22 /s/ *Barbara A. McAuliffe*  
23 UNITED STATES MAGISTRATE JUDGE  
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